

1 PHILLIP A. TALBERT  
United States Attorney  
2 KEVIN C. KHASIGIAN  
Assistant U. S. Attorney  
3 501 I Street, Suite 10-100  
Sacramento, CA 95814  
4 Telephone: (916) 554-2700

5 Attorneys for the United States  
6  
7

8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 APPROXIMATELY 10.19321397  
BITCOIN,

15 Defendant.  
16

2:21-CV-02353-JAM-DB

GOVERNMENT'S *EX PARTE*  
MOTION FOR ORDER PERMITTING  
DIRECT NOTICE OF COMPLAINT  
FOR FORFEITURE BY EMAIL

17 Plaintiff, the United States of America, by and through its undersigned attorney, respectfully  
18 requests that this Court enter an *Ex Parte* Order Permitting Alternate Service in the above captioned  
19 matter, for the reasons set forth below.

20 **STATEMENT OF FACTS**

21 On December 17, 2021, a civil complaint seeking forfeiture pursuant to Title 18, U.S.C. §  
22 981(a)(1)(C) was filed in the United States District Court for the Eastern District of California by the  
23 United States of America, plaintiff, seeking forfeiture of the Approximately 10.19321397 Bitcoin  
24 (hereafter "defendant cryptocurrency"). ECF No. 1.

25 The defendant cryptocurrency was seized from cryptocurrency exchange Binance. As discussed  
26 in the Complaint, the defendant cryptocurrency is the result of a sophisticated phishing campaign that  
27 occurred during at least February 2021, targeting the Trezor cryptocurrency wallet and website. The  
28

1 suspects lured victims to a fake Trezor site that was like the legitimate one ([https://trezor\[.\]io](https://trezor[.]io)).<sup>1</sup> The fake  
 2 site could be found by searching for “trezor.io wallet” on the Bing search engine. When users logged  
 3 into this fraudulent website the suspects would steal their “mnemonic key,”<sup>2</sup> execute account takeovers  
 4 of the victim wallet, and drain user accounts of some or all of their cryptocurrency. *Id.*

5 Most of the known proceeds from this scam were frozen by the United States and subsequently  
 6 seized by the United States pursuant to a federal seizure warrant. The U.S. Secret Service (“USSS”)  
 7 examined the blockchain and tracked the stolen cryptocurrency to the Binance cryptocurrency exchange.  
 8 The cryptocurrency seized because of the seizure warrant constitutes the defendant cryptocurrency. *Id.*  
 9 As a result of this scheme, one victim was identified. *Id.*

10 The United States has named the defendant cryptocurrency as an *in rem* defendant to ensure a  
 11 formal process for adjudicating the ownership interests in the cryptocurrency. The defendant  
 12 cryptocurrency is currently in the custody of the USSS.

13 The United States has sought to locate the holder of the account from which the defendant  
 14 cryptocurrency was seized. However, it appears the individual is currently in India, beyond the reach of  
 15 United States’ service of process by traditional means. The United States has identified an email address  
 16 that was provided to Binance by the account holder. In addition, someone claiming to be the Binance  
 17 account holder contacted the USSS agent with another email address.

18 Binance accounts are only accessible through the internet via their respective websites or web-  
 19 based applications. Individuals become users of these cryptocurrency exchange platforms by creating  
 20 accounts. Historically, creating such accounts often did not require substantive verification  
 21 documentation, called “know your customer” (“KYC”) information.

22 Beginning on January 8, 2022, following the filing of the Complaint, the United States posted  
 23 Notice of Civil Forfeiture on an official government internet site ([www.forfeiture.gov](http://www.forfeiture.gov)) for 30 consecutive  
 24 days, notifying potential claimants that the United States had filed a verified Complaint for Forfeiture  
 25 against the defendant cryptocurrency pursuant to 18 U.S.C. § 981. The notice instructed potential  
 26 claimants of the need to file a claim and answer, provided additional information regarding petitions for

27 <sup>1</sup> Trezor is a company that makes “wallets” used to store cryptocurrency

28 <sup>2</sup> This mnemonic key contains all of the information required to regenerate a Trezor Wallet. As a result, gaining access to a device’s mnemonic key is like having its password.

remission or restoration, and directed individuals to a government website with additional information. The United States has sent notice to the victim by first class mail, certified mail, and personal service and to Binance by Federal Express. To date, no claims or answers have been filed and no petitions for remission or restoration have been received by the United States.

Because individuals creating Binance accounts were not always required to provide verified identity documentation, identifying information for the account holder is sometimes limited to username and email address. Usernames were generated by the account registrant at the time of its creation and are not intrinsically tied to any other identifying information. With this limited information alone, and without the government first attempting to contact the email address to obtain further information, it is not possible to identify the exact locations of individuals or entities represented by the email address. The government's primary objective in filing its civil forfeiture complaint was to establish an orderly process for the accountholder or victims who have a legitimate interest in the defendant cryptocurrency to have the opportunity to recover any cryptocurrency they rightfully own by making them aware of the proceedings, and of what actions they need to take to identify themselves to the government and file claims.

Serving the Binance accountholder with the Complaint and its accompanying Warrant for Arrest *In Rem* by the government's usual method of delivery — by first-class and certified mail and personal service — is impossible. The government simply cannot determine the whereabouts of the interested party with the limited information it currently has in its possession through any effort, reasonable or otherwise. Service by email to the registered user is the only known alternative to provide direct notice.

## **ARGUMENT**

### **I. Notice that is Reasonably Calculated to Inform All Potential Claimants of these Proceedings Satisfies Due Process and the Requirements of Supplemental Rule G**

Supplemental Rule G of the Federal Rule of Civil Procedure requires that the government “send notice of the action and a copy of the complaint to any person who reasonably appears to be a potential claimant on the facts known to the government . . . .” Supp. R. G(4)(b)(i). This notice provision does not

1 require compliance “with the formal service of process provisions of Federal Rule of Civil Procedure 4 . .  
 2 . because potential claimants are not defendants in an *in rem* action . . . .” *United States v. Sixty*  
 3 *Thousand Twenty Dollars (\$60,020.00) in U.S. Currency*, 2019 WL 2202953, \*3 (E.D. Mich. Apr. 24,  
 4 2019) (citing *United States v. \$22,050.00 United States Currency*, 595 F.3d 318, 320 n.1 (6th Cir. 2010)).  
 5 To properly serve notice under Supplemental Rule G, the government’s efforts must be “‘reasonably  
 6 calculated’ to achieve the intended notice.” *Id.* (citing *Dusenbery v. United States*, 534 U.S. 161, 168  
 7 (2002)).

8 The “reasonably calculated” standard cited in *U.S. v. Sixty Thousand Twenty Dollars* and *U.S. v.*  
 9 *\$22,050.00 United States Currency* is derived from the Due Process Clause of the Fifth Amendment,  
 10 which prohibits the government from depriving any person of property without “due process of law.”  
 11 The Supreme Court has explained that providing such “reasonably calculated” notice does not require  
 12 “heroic efforts” by the government. *Dusenbery*, 534 U.S. at 170; *see also Karkoukli’s, Inc. v. Dohany*,  
 13 409 F.3d 279, 285 (6th Cir. 2005). The form of notice provided by the government must be sufficient to  
 14 put a reasonable person on notice that it is of legal significance and thus important. *See Crespo-*  
 15 *Caraballo v. United States*, 200 F. Supp. 2d 73, 77-78 (D. Puerto Rico Apr. 29, 2002) (analyzing due  
 16 process requirements for notice in administrative forfeiture proceeding). “Reasonably calculated” notice  
 17 must therefore be “reasonably certain to inform those affected,” and in any event, “not substantially less  
 18 likely to bring home notice than other of the feasible and customary substitutes.” *Mullane v. Central*  
 19 *Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

20 Such “reasonably calculated” notice can include, “in the case of persons missing or unknown,  
 21 employment of an indirect and even a probably futile means of notification.” *Id.* at 314. In *Mullane*, the  
 22 Supreme Court recognized that due process does not require the same form of notice for everyone. The  
 23 appellants in *Mullane* challenged the judicial settlement of a common trust established under New York  
 24 law on the ground that notice by newspaper publication alone, which was the standard permitted under  
 25 the New York Banking Law, was “inadequate to afford due process under the Fourteenth Amendment.”  
 26 *Id.* at 311. The Supreme Court agreed with appellants that, in the case of known beneficiaries whose  
 27 residences were known to the trust, notice by publication alone was inadequate, where the trust had  
 28 already shown its ability to mail notice to known beneficiaries in the past. *Id.* at 318-19.

But the court also held that, in the case of the “beneficiaries . . . whose interests or whereabouts could not with due diligence be ascertained,” notice by publication alone *did* satisfy due process. *Id.* at 317. Following *Mullane*, the Sixth Circuit in *Karkoukli’s, Inc.*, held that, after appellees’ “significant efforts” to mail actual notice without result, “it was reasonable for them to treat Karkoukli’s whereabouts as ‘missing or unknown’ and move on to methods of constructive notice,” and thus notice by publication satisfied due process. *Kakoukli’s, Inc.*, 409 F.3d at 285-86.

The courts have also held that notice in English is “reasonably calculated” to notify potential claimants of forfeiture proceedings even when English is not their native or primary language. *See Toure v. United States*, 24 F.3d 444 (2nd Cir. 1994). In *Toure*, the appellant was a native French speaker residing in Togo with limited ability to read and understand English. *Id.* at 445. He claimed that the notice of administrative forfeiture provided by the Drug Enforcement Administration in English, rather than his native language of French, denied him of due process. *Id.* The *Toure* Court, using a “reasonableness” standard, considered “whether the notice was “sufficient to put a reasonable person on notice that the order was important and, if not understood, required translation.” *Id.* at 446 (citations omitted). The *Toure* Court concluded that such notice was, in fact, reasonable, and thus satisfied due process requirements.

## **II. Email Notice is Reasonably Calculated to Notify All Potential Claimants of these Proceedings**

In the case at bar, the government seeks permission to notify the known potential claimant directly by email. In typical forfeiture proceedings, the government provides direct notice to potential claimants by first class mail and certified mail, and to some potential claimants by personal service. However, as noted above, the United States only possesses the name of and email addresses for the Binance accountholder. Identifying information for the account identified by Binance is limited to a username, Indian passport, unverified phone number and email address. The government does not know the mailing address for the Binance accountholder or if the person who contacted the USSS agent using a different email address than the one registered with Binance is the Binance account holder or not. After a thorough investigation, it is not known if the Binance accountholder resides in the United States or

1 another country. The United States simply cannot obtain any additional identifying information for the  
 2 Binance accountholder. The true owner of the registered account is, for purposes of providing typical  
 3 notice by mail, “missing or unknown” to the government.

4 Here, like in *Mullane and Karkoukli’s, Inc.*, there are potentially interested parties whose specific  
 5 interests and whereabouts are presently unknown, warranting a departure from the typical notice  
 6 procedures. However, unlike in *Mullane and Karkoukli’s, Inc.*, the government is not seeking to satisfy  
 7 its due process obligations through mere publication. Instead, the government seeks permission to pursue  
 8 an alternative method of direct notice via email, in addition to notice by publication.

9 As stated above, the government’s primary objective in this proceeding is to establish an orderly  
 10 process by which the potential claimants who may have a legitimate interest in the defendant  
 11 cryptocurrency will have an opportunity to recover some or all of the value of their portion of the seized  
 12 defendant cryptocurrency. If no claims or answers are filed, the United States intends to file a Motion for  
 13 Default Judgment and Final Judgment of Forfeiture. Once the defendant cryptocurrency has been  
 14 forfeited, the United States will then initiate a petition for remission process with the victim. Service by  
 15 email is “reasonably calculated” to both reach the potential claimant and inform him/her of the legal  
 16 significance of such notice. The email notice will “describe[] in detail the procedure for contesting the  
 17 forfeiture,” *Crespo-Caraballo*, 200 F. Supp. 2d at 77-78, and provide the potential claimant with a link to  
 18 access a publicly available web page with additional information. It will contain, at a minimum, all of  
 19 the information that would be contained in a physical mailing (in either the body of the email, its  
 20 attachments, or both).

21 Service by email has been routinely permitted by the federal courts in other civil matters. *See*,  
 22 *e.g., FKA Distributing Co. v. Yisi Tech. Co.*, 2017 WL 4129538, \*1 (E.D. Mich. Sept. 19, 2017)  
 23 (collecting cases); *McCluskey v. Belford High School*, 2010 WL 2696599 (E.D. Mich. June 24, 2010)  
 24 (“Numerous federal courts have held that service by e-mail is appropriate and consistent with Due  
 25 Process in circumstances where the party to be served does business on the internet and via e-mail.”  
 26 (citations omitted)). For example, in *Elcometer, Inc. v. TQC-USA, Inc.*, 2013 WL 592660 (E.D. Mich.  
 27 Feb. 14, 2013), the plaintiff sought to serve the defendants, who were located in Panama, “via email,  
 28 arguing that [they] conduct their business on the internet and through email and [email service] is

1 reasonably calculated to give [them] notice . . . .” *Id.* at \*2. The *Elcometer, Inc.* Court found that such  
 2 service was “reasonably calculated” where the defendants conducted their business on the internet and  
 3 had responded to plaintiff’s counsel via email. *Id.* at \*3.

4 Like the defendants in *Elcometer, Inc.*, the Binance accountholder in this case has conducted  
 5 his/her business on the internet – the defendant cryptocurrency was only accessible through  
 6 cryptocurrency exchanges using the internet. In order to establish his/her exchange profiles, the Binance  
 7 accountholder provided an email address, indicating that he/she utilizes that email address to conduct  
 8 his/her business as it concerns the defendant cryptocurrency. Accordingly, direct notice by email is  
 9 appropriate and consistent with due process and satisfies the requirement of Supplemental Rule G.

10 In determining whether due process is satisfied by email communication, courts “have considered  
 11 whether . . . the movant has established that the email address in question is valid.” *FKA Distributing*,  
 12 2017 WL 4129538 at \*2 (citation omitted); *see also Lexmark Inter’l, Inc. v. Ink Tech. Printer Supplies*,  
 13 *LLC*, 295 F.R.D. 259 (S.D. Ohio Dec. 2, 2013). To demonstrate validity, courts consider whether  
 14 “communication has occurred . . . at those email addresses,” *Lexmark International*, 295 F.R.D. at 262,  
 15 and whether attempts to send email to those addresses were “returned as undeliverable or did not ‘bounce  
 16 back,’” *FKA Distributing*, 2017 WL 4129538 at \*2. Here, there is indicia that the email addresses are  
 17 valid, principally that they were provided by the individual who registered the account, and one was used  
 18 to contact the USSS agent.

19 In *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007 (9th Cir. 2002), the appellant, Rio  
 20 International Interlink (“RII”), challenged “the sufficiency of the service of process, effected via email  
 21 and regular mail . . . .” *Id.* at 1012. RII was “a Costa Rican entity that participate[d] in an Internet sports  
 22 gambling operation,” sued for “various trademark infringement claims” by Rio Properties, Inc. (“RIO”).  
 23 *Id.* at 1012-13. After RIO’s initial attempts to serve RII by mail failed, RIO learned that RII “preferred  
 24 communication through its email address” and ultimately provided service through email pursuant to a  
 25 court order.<sup>3</sup> *Id.* at 1013. The *Rio* Court concluded that email service provided RII with due process  
 26 because it was “reasonably calculated” to notify RII of the pending action. *Id.* at 1017. The *Rio* Court

27  
 28 <sup>3</sup> RIO also served RII by mail at RII’s international courier address in the United States, but the *Rio* Court separately analyzed whether each form of service satisfied constitutional due process requirements.



1 went on to note that “RII structured its business such that it could be contacted *only* via its email  
 2 address,” and that email was “the method of communication which RII utilizes and prefers.” *Id.* at 1018  
 3 (emphasis in original).

4 The potential claimant is similarly situated to the appellant in *Rio*. In order to interact with the  
 5 cryptocurrency exchanges and access his/her portion of the defendant cryptocurrency, the potential  
 6 claimant had to register the account with the exchange. Binance *only* provided the government with one  
 7 method of contact for that account holder – an email address<sup>4</sup> – not a physical mailing address. Thus, for  
 8 purposes of this case concerning the defendant cryptocurrency, the potential claimant has essentially  
 9 “designated [his/her] email address as [his/her] preferred contact information.” *Id.* at 1018.

10 The decision of the potential claimant to rely on his/her email address as a means of contact when  
 11 establishing the Binance account sufficiently verifies the validity of the email address. A requirement  
 12 that the government first test the validity of the email addresses by sending emails and tracking delivery  
 13 receipts or “bounce back[s]” would represent an expenditure of time and resources comparable to what  
 14 the government already needs to undertake to serve notice of the complaint immediately via email to the  
 15 untested email addresses.

16 Moreover, in the event that the government took this additional step to further validate the email  
 17 address and discovered that any of them were not valid, the government would be in no better position to  
 18 reach the potential claimant with direct notice. As stated above, despite diligent efforts, the government  
 19 has been unable to discover any other identifying information related to the Binance account holder other  
 20 a username, Indian passport, unverified phone number and email address. If the email address associated  
 21 with a registered Binance account and the other email address used to contact the USSS agent proves to  
 22 be invalid (which will be determined in the event that notice is sent via email), the government will have  
 23 no better way to contact the potential claimant than publication.

## 24 CONCLUSION

25 For the reasons stated above, the government asks that this court enter an order permitting direct  
 26 notice via email of the Complaint for Forfeiture and the Warrant for Arrest *In Rem* to potential claimant  
 27

28 <sup>4</sup> The potential claimant also provided a username to be associated with the account, but that self-generated username is not inherently tied to any traditional form of identification.



1 Tarun Kumar Arora, who has been identified as the holder of the Binance account the defendant  
2 cryptocurrency was seized from.

3 Respectfully submitted,

4 Dated: 3/8/2022

PHILLIP A. TALBERT  
United States Attorney

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6 By: /s/ Kevin C. Khasigian  
KEVIN C. KHASIGIAN  
Assistant U.S. Attorney  
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